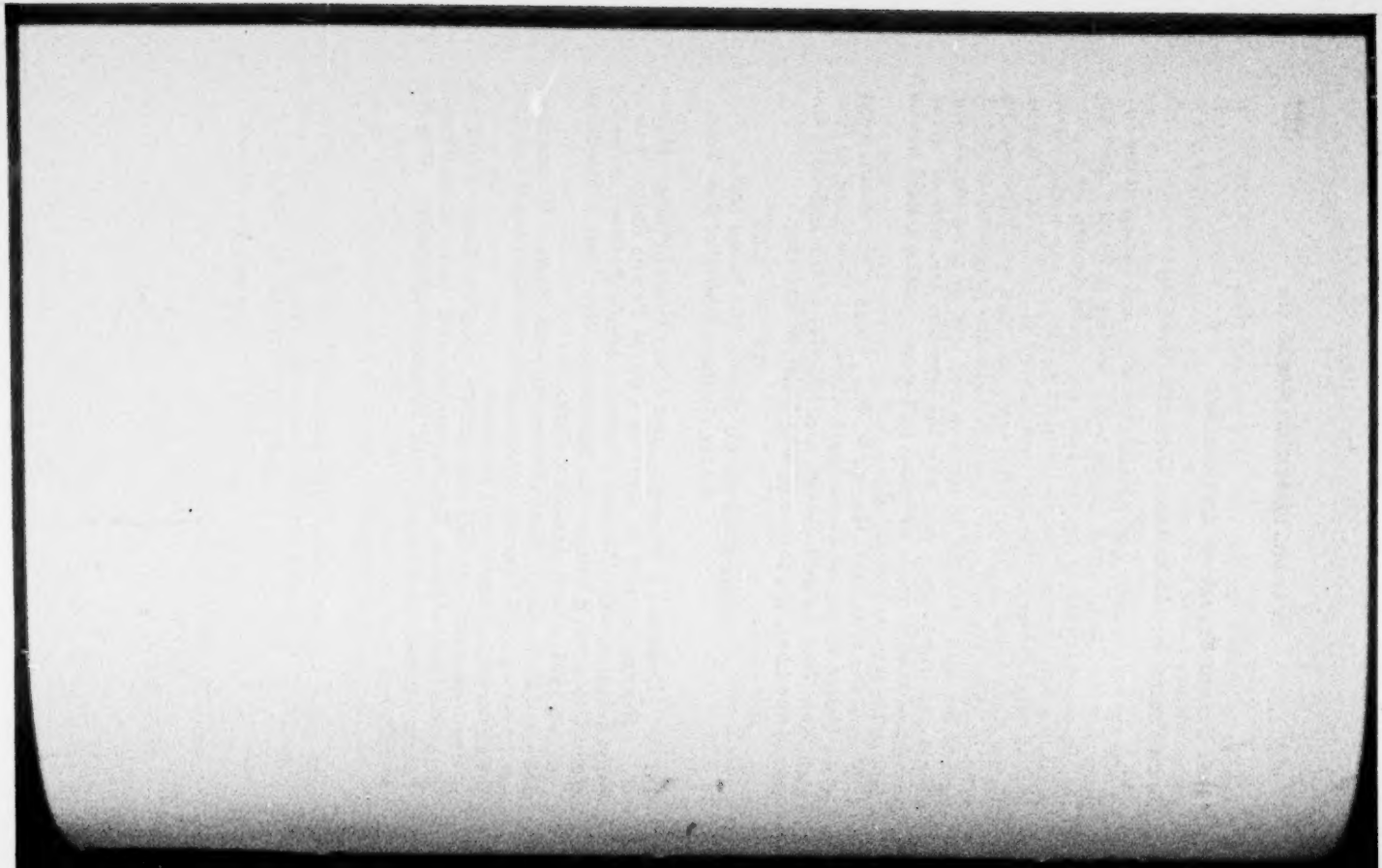

SUPREME COURT OF THE UNITED STATES.

October Term, 1904.
No. 460.

HIRAM REMINGTON,
Plaintiff in Error,
vs.
CENTRAL PACIFIC RAILROAD COMPANY.

MOTION AND NOTICE OF MOTION TO ADVANCE UNDER RULE 32.

Now comes Hiram Remington, the plaintiff in error, by his counsel, and moves the Court, that the above entitled case be advanced under Rule 32 and heard under the rules prescribed by Rule 6, in regard to motions to dismiss writs of error and appeals, upon the ground that this case is brought to this Court by writ of error under Section 5 of the Act of March 3, 1891, Chapter 517, and the only question in issue in the case is the question of the jurisdiction of the court below.

The action was brought by the plaintiff in error in the Supreme Court of the state of New York. The defendant, Central Pacific Railroad Company, made a motion in the state court to set aside the service of the summons on the defendant. This motion was denied by an order of the state court duly entered (Printed Record, p. 29). Thereafter

the defendant filed in the state court a petition and bond for the removal of the action to the Circuit Court of the United States for the northern district of New York on the ground of diverse citizenship (Printed Record, p. 2).

After the filing of the record on removal in the court below, the defendant made another motion in that court (by an order to show cause) to set aside the service of the summons on the defendant (Printed Record, pp. 73-93). The plaintiff filed written objections in the court below to the hearing, consideration or decision by the court below of said motion or order to show cause, upon grounds going to the jurisdiction of the court below (Printed Record, pp. 96 and 97). The plaintiff made a motion in the court below to remand the action to the state court, whence it came, upon grounds going to the jurisdiction of the court below (Printed Record, pp. 95-96).

The court below denied plaintiff's motion to remand (Printed Record, pp. 76-77), granted defendant's motion to set aside the service of the summons (Printed Record, pp. 77-78) and rendered judgment dismissing the action for want of jurisdiction of the defendant (Printed Record, pp. 78-79). The recitals in this judgment show the jurisdictional question.

The certificate at the end of the bill of exceptions, made by the judge before whom all the proceedings in the action in the court below were had, contains the following: "I further certify that the jurisdiction of the Court is in issue in said case and is the only question arising in said case." (Printed Record, p. 105.) The bill of exceptions shows the jurisdictional question.

The petition of the plaintiff for the writ of error sets forth the jurisdictional question (Printed Record, pp. 106-107). The order of the court below allowing the writ of error shows that the only question arising in the case and the only question tried and decided by the court below was the question of the jurisdiction of that court and allows the writ of error solely upon the question of the jurisdiction of the court, as prayed for in said petition (Printed Record, pp. 113-114). The printed brief or argument for the plaintiff in error is herewith submitted to the Court as prescribed in Subdivision 4 of Rule 6.

Dated, January 14th, 1905.

JAMES G. FLANDERS,
Of Counsel for Plaintiff in Error.

TO MAXWELL EVARTS, ESQ.,
Of counsel for Central Pacific Railroad Company, Defendant in Error:

Please take notice that I shall present and make the foregoing motion in the Supreme Court of the United States, at the place of holding said court, in the City of Washington, District of Columbia, on Monday, the 13th day of February, A. D. 1905, at the opening of court on that day or as soon thereafter as counsel can be heard, and at the same time and place I shall submit to said Court the printed brief or argument for the plaintiff in error in the above entitled case, a copy of which is herewith served upon you, in accordance with Rules 32 and 6 of said court.

Dated, January 14th, 1905.

JAMES G. FLANDERS,
Of Counsel for Plaintiff in Error.